IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 479 of 1998

Between:

M/s. Sri Sai Ram Rolling Mills, Rep. by its Partner Ganapathi
S/o. Late Sriramulu, R/o. Innispet,

Rajahmundry, E.G.District.

..... PETITIONER

AND

1 The Commissioner of Labour,
Andhra Pradesh, Hyderabad.
2 The Asst. Commissioner of Labour,
Rajahmundry, East Godavari District.
3 The Asst. Labour Officer,
II Circle, Rajahmundry,
East Godavari District.
4 S. Prakash Rao (Dismissed) S/o. S. Israil Raju
Konerupeta Centre, Hukumpet, Rajahmundry,
E.G.District. R4 Disd. for default as per Court order dt. 4/9/01.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the Nature of Writ of Mandamus declaring the demand notice issued by the 3rd Respondent in Rc. No.E/2934/97 Dt. 13.6.97 and the consequential impugned order Dt. 23.10.97 in Rc. No. B/1974/97 of the 2nd Respondent as highly illegal, arbitrary, improper and unjust and consequently direct the Respondents 1 to 3 to drop all further proceedings in this regard and to pass

Counsel for the Petitioner: MR.BADANA.BHASKARA RAO

Counsel for the Respondents 1 to 3: GP FOR LABOUR

The Court made the following :

ORDER:

This writ petition is filed seeking a declaration that the demand notice dated 13.06.1997, issued by respondent No.3, and the consequential orders dated 23.10.1997, passed by respondent No.2 dated 23.10.1997, imposing fine of Rs.20,000/- against the petitioner for engaging children in an hazardous industry, as illegal, arbitrary and contrary to law.

The facts in brief, which lead to filing of the present writ petition are - the petitioner is a small-scale industry. It is engaged in the manufacture of vessels out of ingots. While so, an inspection of the petitioner's factory premises was alleged to have been conducted on 2-5-1997, and based on the alleged inspection report, which found the petitioner to have employed children, respondent No.3 issued demand notice dated 13-6-1997 alleging that the petitioner engaged two child labour in the processing of metal, which is hazardous and is prohibited under the Child Labour (Prohibition and Regulation) Act, 1986, and called upon the petitioner to pay Rs.20,000/- per child. The petitioner, it appears, without paying the amount demanded in the demand notice, submitted objections, and thereafter, an enquiry was conducted, and not satisfied with the stand taken by the petitioner in the enquiry, respondent No.2 passed the impugned order dated
23-10-1997, confirming the demand notice issued by respondent No.3. Assailing this order, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Labour and Employment.

The learned counsel for the petitioner submitted that the petitioner is a non-hazardous industry, and on the request made by the father, his children were engaged in his employment as office boys on humanitarian ground, during summer vacation only, having regard to their weak financial position. He further contended that before issuing the impugned demand notice and the consequential impugned order, no reasonable opportunity of hearing was afforded to the petitioner to put forth their case during the enquiry. The impugned demand notice, and the consequential orders, are the result of an alleged enquiry, conducted behind the back of the

petitioner and without any notice, and further no report of the enquiry was furnished to the petitioner. He submitted that since the petitioner is not an hazardous industry, and having regard to the fact that the children were employed as office boys, the rigor of the judgment of the Apex Court in W.P. No. 465 of 1986, which dealt with elimination of child labour in hazardous factories and industries, cannot be applied to the case of the petitioner, and as such, the action of respondent No.3 in issuing demand notice, demanding the petitioner to deposit a sum of Rs.20,000/- as penalty, which was confirmed by the consequential orders of respondent No.2, are illegal and unjust, and as such, are liable to be quashed and set aside.

Though the writ petition was admitted in January, 1998, till date no counter affidavit is filed in the matter. However, the learned Government Pleader for Labour appearing on behalf of the respondents submitted that the petitioner is an hazardous industry, engaged in the processing of metal, and having regard to the fact that the petitioner employed child labour in his industry, which is prohibited by the Child Labour (Prohibition & Regulation) Act, 1986 and the judgment of the apex Court in W.P. (Civil)
No. 465 of 1986, respondent No.3 upon an inspection report, issued the demand notice imposing penalty of Rs.20,000/-, which was confirmed by respondent No.2, and no exception can be taken thereto.

While admitting the writ petition, this Court by order dated
6-1-1998 granted a conditional interim order suspending the impugned order on condition of petitioner depositing Rs.5000/- by 31-1-1998.

A perusal of the impugned order, would reveal that pursuant to an inspection of the petitioner's industry on 2-5-1997, wherein it was found that the petitioner engaged two school going children, a demand notice dated 13-6-1997 was issued by respondent No.3 to the petitioner to deposit an amount of Rs.40,000/- (Rs.20,000/- for each child engaged), and thereafter, considering the objections filed by the petitioner, an enquiry was conducted, and on verification of the school records of the children in question, and the admitted stand taken by the petitioner that they engaged two children in their industry during summer vacation, respondent No.2 passed the impugned proceedings dated 23-10-1997, confirming the demand notice issued by respondent No.3, directing the petitioner to deposit Rs.20,000/- for each child engaged.

Though the petitioner contends that he engaged the children as office boys and not for any hazardous jobs, and that too at the request of their father, the fact remains, engaging of child labour in factories and industries, is prohibited under the Child Labour (Prohibition & Regulation) Act, 1986, and inasmuch as it is the admitted case of the petitioner that he engaged child labour in his industry, he should be held to have violated the provisions of the Child Labour (Prohibition & Regulation) Act, 1986, and as such, is liable for the consequences arising therefrom. Therefore, no exception can be taken to the demand notice issued by respondent No.3, which stood confirmed by the impugned proceedings issued by respondent No.2. Under Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986, whoever employs any child or permits any child to work in contravention of the provisions of Section 3 is punishable with imprisonment for a term not less than three months and not more than one year or with fine of not less than ten thousand rupees, which may extend to twenty thousand rupees or with both. Inasmuch as in the instant case, the petitioner engaged the two children as office boys (non-hazardous jobs) in the industry, only during summer vacation, and that too at the request of his father, on humanitarian grounds, to enable them purchase text books etc. for pursuing their education, I am of the considered opinion that the ends of justice would be met, if the writ petition is disposed of reducing the penalty imposed and demanded in the impugned notice and the consequential order from Rs.20,000/- to minimum fine amount under the Child Labour (Prohibition & Regulation) Act, 1986 i.e., Rs.10,000/-.

Accordingly, the writ petition is disposed of reducing the penalty imposed and demanded in the demand notice dated
13-6-1997, issued by respondent No.3, and the consequential impugned order dated 23-10-1997, issued by respondent No.2, confirming the demand notice, from Rs. 20,000/- to Rs.10,000/-.
No costs.

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N.V.RAMANA,J

23-3-2005

TVK/JSU

To

1 The Commissioner of Labour,
Andhra Pradesh, Hyderabad.
2 The Asst. Commissioner of Labour,
Rajahmundry, East Godavari District.
3 The Asst. Labour Officer,
II Circle, Rajahmundry,
East Godavari District.
4 2 CCs to the G.P. for Labour, high Court Buildings, Hyderabad. (OUT)

5 2 CD copies